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OFFICE OF PETITIONS

In re Application of :
Frampton Erroll Ellis :
Application No.: 10/684,657 : ON PETITION
Filed: NO FILING DATE ACCORDED :
Attorney Docket No.: GNC26US :

This a decision on the "Petition for Filing Date" filed June 1, 2004. The petition will be treated under 37 CFR 1.182 in accordance with 37 CFR 1.53(e)(2).

The petition is **granted**. The application has been accorded a filing date of October 15, 2003, and will be processed as an application filed under 37 CCR 1.53(b).

The subject non-provisional application was filed on October 15, 2003. On March 29, 2004, the Initial Patent Examination Division mailed a Notice of Incomplete Nonprovisional Application indicating that the application had not been accorded a filing date because the specification was missing. The notice allowed a two-month period for reply. The instant petition was filed on June 1, 2004 and was accompanied by a complete copy of provisional application 60/418, 177.

Petitioner argues that the subject application was complete on October 15, 2003, because the applicant filed several documents that either incorporated by reference the provisional application 60/418,177 or made reference to the provisional application. Petitioner also maintains that the Patent and Trademark Office (Office) acknowledged receipt of the subject non-provisional application by a postcard date-stamped by the Office on October 15, 2003.

In view of the incorporation by reference contained in the paper filed October 15, 2003, titled "Note", the USPTO may, on petition, accept a copy of the prior application at a later date and accord this application an October 15, 2003, filing date. The "Note" will be construed as amendment requesting the acceptance of the omitted application papers based on the incorporation by reference statement. Accordingly, the petition to accept the later filed specification and drawings and accord this application a filing date of October 15, 2003, is granted.

The petition fee of \$130.00 will not be refunded as the petition was required in order to obtain the filing date requested. Section 201.06(c)(A)¹ of the Manual of Patent Examining Procedure provides that:

[m]aterial needed to accord an application a filing date may not be incorporated by reference. Therefore, if a continuation or divisional application as originally filed incorporates by reference material omitted from the application papers, which is needed to accord the application a filing date, the application will not be entitled to a filing date. a petition under 37 CFR 1.182, and the required petition fee, including an amendment submitting the necessary omitted material, requesting that the necessary omitted materials contained in the prior application and submitted in the amendment, be included in the continuation or divisional application based upon the incorporation by reference statement, is required in order to accord the application a filing date as of the date of deposit of the continuation or divisional application.

Given the aforementioned, the instant petition and fee were required in order to accord the application a filing date of October 15, 2003.

The application will be forwarded to the Office of Initial Patent Examination for further processing with a filing date of October 15, 2003, using the application papers filed on October 15, 2003, and those filed on June 1, 2004.

Telephone inquiries concerning this matter may be directed to the undersigned at (703) 305-0010.



Kenya A. McLaughlin
Petition Attorney
Office of Petitions

¹ The use of "continuation or divisional application" in this section is interpreted to include non-provisional application's of a provisional application.